

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4527 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD.

Versus

KETANBHAI BHAGVANDAS SHAH

Appearance:

MR PV NANAVALI for Appellant
MR HM PRACHCHAK for Respondent No. 1
NOTICE SERVED BY DS for Respondents No. 2-3

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.H.KADRI

Date of decision: 16/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. This is an appeal under section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the said Act) at the instance of the Insurance Company challenging the judgement and award passed by the Motor Accident Claims Tribunal, Ahmedabad, in Motor Accident Claims Petition No.662/95 dated 27th April 2001. This Court had issued notice for summary disposal in response to which learned counsel Mr. Prachchhak has appeared on behalf of respondent no.1-original claimant, who was also the driver of the scooter in question. Other respondents are absent though served.

2. Appeal admitted. Mr. Prachchhak waives service of notice in the appeal on behalf of the respondent no.1-original claimant.

3. As aforesaid, this is an appeal by the Insurance Company challenging the aforesaid award contending that the Insurance Company is not liable to satisfy the award on the ground that the second respondent, who was the driver of the offending vehicle insured by the appellant insurer, had violated one of the essential terms and conditions of the policy, inasmuch as he did not hold an effective driving licence on the date of the accident.

4. In order to appreciate the controversy between the parties it is necessary to set down only a few factual aspects, which are not in controversy.

4.1 The driver of the Matador (insured by the appellant) had, prior to the accident, held a valid driving licence for the period commencing on 28th January 1992, which expired on 27th January 1995. After the expiry of the validity period of the said licence, the driver of the Matador insured by the appellant, met with an accident on 19th March 1995, causing injuries to the claimant. It is obvious, and not in controversy that on the date of the accident the driver of the insured had no valid licence. However, considerably after the date of the accident, the driver obtained a renewal of the expired licence, and the renewed licence was valid from 12th September 1995 upto 11th September 1998. As aforesaid, these facts are not in controversy.

5. The appellant Insurance Company contends that since the driver of the insured did not hold an "effective" driving licence on the date of the accident, this violates one of the essential terms and conditions of the policy issued in favour of the insured. For this reason the Insurance Company submits that it is not

liable to satisfy the award. On the other hand, learned counsel for the claimant submits that the Insurance Company is liable, in spite of the fact that on the date of the accident the claimant did not hold a valid driving licence, on account of the fact that the renewal of the licence demonstrates that he was "not disqualified from holding an effective driving licence".

5. The policy in question is at Exh.24 on record. The relevant clause pertaining to authorisation of persons who are entitled to drive reads as under:

"Any person including the insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence ..."

It is this clause which is the subject matter of controversy between the parties. The controversy focuses around the question as to whether this clause, in its two parts, divided by the word "and", should be read in the conjunctive sense or should be read in the adjunctive sense.

6. According to the learned counsel for the claimant, once it is shown that the claimant was not disqualified from holding a license, it is not necessary that the claimant must and should have held an effective licence on the date of the accident. On the other hand learned counsel for the appellant Insurance Company submits that in order to escape the operation of the proviso, the person who is driving the vehicle should hold an effective driving licence at the time of the accident, and must also not be disqualified from holding or obtaining such a licence.

7. In order to examine this controversy in its correct context and perspective, it is necessary to note a few statutory provisions.

7.1 Section 3 of the Motor Vehicles Act, 1988 reads as under:

"3. Necessity for driving licence. - (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or a motor cycle hired for his own use or rented under

any scheme made under sub-section (2) of Sec.75 unless his driving licence specifically entitles him so to do.

- (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government." (emphasis supplied)

A plain reading of this provision makes it clear that the said provision imposes a statutory bar against a person driving a motor vehicle in any public place unless he holds an effective driving licence.

7.2 Section 2, subsection (10) of the said Act defines a "driving licence", and reads as under:

"(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;"

7.3 Section 149 of the said Act deals with the duty of insurers to satisfy judgements and awards against persons insured in respect of third party risks. However, subsection (2) of section 149 carves out an exception to the general rule propounded in subsection (1). In other words, subsection (2) of section 149 permits an insurer to defend the claim for compensation on the grounds specified therein.

7.4 Section 149(2)(a)(ii) reads as under:

"(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification;" (emphasis supplied)

In the context of this clause, it is very pertinent to note that such a condition imposed in the policy can exclude from coverage under the policy a person who is not duly licensed, or a person who has been disqualified for holding or obtaining a driving licence during the period of this disqualification.

8. It is in the context of these statutory

provisions that the exclusion clause which is found in the policy in question requires to be interpreted.

9. It was submitted on behalf of the claimant that although the driver of the vehicle did not hold a valid licence on the date of the accident, this did not by itself bring into operation the exclusion clause contained in the proviso to the general rule (that the vehicle insured may be driven by any person), and the mere fact that he had obtained a renewal of the licence after the date of the accident demonstrates that he was not disqualified from obtaining such a licence. On the other hand, learned counsel for the appellant Insurance Company contended that in order to qualify for coverage under the policy i.e. in order that the policy should not exclude the insured from the benefits of the policy, it is necessary for the claimant or driver to establish two facts - (1) that on the date of the accident he held an effective driving licence and (2) that he was not disqualified from holding or obtaining such a licence. According to the learned counsel for the appellant, both the conditions must be satisfied. It was also urged in the alternative that if the Insurance Company succeeded in establishing that either of the two conditions was not satisfied, the exclusion clause would come into operation. In other words, it was contended that the driver of the vehicle must first hold an effective driving licence, and if he did not hold an effective driving licence on the date of the accident, the exclusion clause would come into operation. Furthermore, even if the driver held an effective driving licence on the date of the accident, if the Insurance Company succeeded in showing that on the date of the accident he was not qualified to hold or obtain a driving licence, the exclusion clause would still come into operation.

10. When we examine these rival contentions in the correct perspective, certain conclusions come to the forefront. If the contention of the respondent-claimant were to be accepted, it would amount to saying that the driver of a vehicle involved in the accident need not necessarily hold an effective driving licence on the date of the accident, and it is sufficient for him to obtain a licence thereafter, and then contend that he was not disqualified from holding or obtaining such a licence. This contention runs in the face of the blanket bar imposed by section 3 of the said Act, as noted hereinabove.

11. On the other hand, the contention raised by the Insurance Company requires to be accepted for a number of

reasons.

11.1 A plain reading of the exclusion clause indicates that any person may drive the vehicle insured provided firstly, such person holds an effective driving licence (within the meaning of the said Act), and secondly, that such driver is not disqualified from holding or obtaining such licence. In other words, even if the driver of the vehicle did in fact hold an effective driving licence on the date of the accident, it would still be open to the Insurance Company to contend and establish that, on the date of the accident, he was not qualified to hold or obtain such driving licence. This view must be upheld in view of various contingencies which may arise in the normal course of human events. It could well be envisaged that a person who obtains an effective driving licence is perfectly qualified to obtain and hold such a driving licence on the date when it is issued. However, it is also possible that during the validity period of such licence, he may acquire a disqualification which prevents him from holding or obtaining such a licence. The simplest example of such a situation is where a driver, after obtaining a licence, suffers some physical disability such as loss of vision, loss of hearing, total amputation of one limb, etc., which would disqualify him from obtaining and holding a driving licence. Thus, a disqualification acquired during the validity period of a driving licence is also sufficient to bring into operation the exclusion clause in the policy. It cannot possibly be urged by a driver that once an effective driving licence is issued, having validity for a specified period, he remains qualified to drive the vehicle for that specified period, irrespective of disqualifications acquired during the period.

12. In the context of the above discussion it becomes obvious that the view canvassed by the appellant Insurance Company requires to be accepted. In other words, in order to qualify for enforcement of the award against the Insurer under section 149(1) of the said Act, the driver of insured must firstly hold an effective driving licence on the date of the accident. If he, in fact, holds such a licence, it is nevertheless open to the Insurance Company to establish by appropriate evidence on record that after the issuance of the licence he acquired a disability, either physical or legal, on account of which, on the date of the accident, he was disqualified from holding or obtaining an effective driving licence.

12.1 This view is further supported by the language of

section 149(2)(a)(ii) of the said Act quoted hereinabove. A plain reading of this clause would show that the Insurance Company is permitted by the statute to exclude driving by a person who is not duly licensed or by any person who has been disqualified from holding or obtaining a driving licence. This specific language of the Statute cannot be construed except in one way. Obviously the Insurance Company is authorised by statute not to cover two classes of persons, the first of such class being a person who is not duly licensed, and the second class being those who may hold a driving licence, but who have been disqualified from holding or obtaining a driving licence after obtaining such licence.

12.2 It was also submitted by learned counsel for the claimant that the Motor Vehicles Act is a beneficial piece of legislation and must be construed accordingly i.e. in favour of claimants and insured parties. It would be too much to extend the phrase "benevolent piece of legislation", to the extent where it renders violence upon the plain language of the statute as also upon the intention of the Legislature. As aforesaid, if the contention of the respondent-claimant were to be accepted, the need for holding an effective driving licence on the date of the accident would be obviated, and section 3 of the said Act would be rendered nugatory. If such a contention were to be accepted, every driver of a vehicle would feel confident that he essentially needs to obtain a driving licence only after the accident in order to establish that he was not disqualified from holding a licence. As aforesaid, such a view would render violence upon the intention of the Legislature.

13. Learned counsel for the respondent-claimant has sought to rely upon a number of decisions of other High Courts. We are not inclined to enter into a discussion in respect of these decisions for the reason that they do not canvass the proposition propounded by the learned counsel for the claimant as discussed hereinabove. Even otherwise, assuming that it is possible to construe such decisions as suggested by learned counsel for the claimants, such decisions are only persuasive in nature and are not binding upon this High Court.

14. Learned counsel for the respondent-claimant also seeks to rely upon the decision of the Supreme Court in the case of Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., reported in AIR 1999 SC 3181. In our opinion, this decision has no application to the controversy at hand. In the said decision the Supreme court was considering the implication of the fact where

the person driving the vehicle at the time of the accident was authorised to drive only a Light Motor Vehicle and not a Transport Vehicle. On the facts of the case, the Supreme Court held that where such driver was authorised to drive a Light Motor Vehicle, it cannot always mean a light goods carriage, and it can also be a non-transport vehicle as well.

14.1 Learned counsel for the appellant Insurance Company sought to rely upon the decision of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. M.M. Tambe, reported in AIR 1996 SC 1150. This decision deals with the interpretation of section 96 of the Motor Vehicles Act, 1939. In that context, the Supreme Court was required to consider that when the driver of the vehicle in question held a learner's licence at that point of time, whether the Insurance Company was liable to pay the compensation which had been awarded. In the said decision (para 12), the Supreme Court interpreted section 2(5A) of the Act of 1939, which defines "driving licence", and (in para 13) also interpreted section 3 of the said Act. In that context, therefore, the Supreme Court held that when the driver had obtained a learner's licence, it was not a licence within the meaning of section 2(5A) of the said Act. It was in that context therefore the Supreme Court held that the Insurance Company was not liable to pay the amount which had been awarded in favour of the original claimant. This decision, however, in our opinion, has no direct bearing on the controversy at hand. However, it is possible to accept the general principle that where the driver did not hold an "effective" driving licence on the date of the accident, the Insurance Company is not required in law to satisfy the Award passed against the insured.

14.2 Learned counsel for the appellant Insurance Company also sought to rely upon a decision of the Supreme Court in the case of United India Insurance Co. Ltd. Vs. Gian Chand and others, reported in 1997 ACJ 1065. Here again, in our opinion, the said decision has no direct bearing on the controversy at hand. In this decision the Supreme Court was considering a situation where the car was being driven, at the time of the accident, by a person who had no driving licence, and in this context the Supreme Court held that the exclusion clause in the policy did not permit the insured to hand over the vehicle for purpose of driving to an unlicensed driver.

15. In the premises aforesaid, we find that the grounds raised by the appellant are eminently sustainable

and require that the appeal be allowed. Consequently the appeal is allowed. The impugned award is quashed and set aside only to the extent that the same holds the appellant Insurance Company liable to satisfy the award passed against the owner and driver of the offending vehicle. On the facts and circumstances of the case there shall be no order as to costs. Decree accordingly.

16. It is clarified that the appellant Insurance Company shall be entitled to obtain refund/restitution in respect of the amount which it may have deposited before the Tribunal.

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